

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1857 OF 1981

Voltas Limited .. Petitioners

V/s

The Union of India & Ors. .. Respondents

Mr.D.B. Shroff with Mr.H.N. Vakil i/b Mulla & Mulla
Craigie, Blunt & Caroe for the Petitioners.

Mr.R.V. Desai with Mr.Y.R. Mishra for the Respondents.

CORAM : H.L. GOKHALE & V.R. KINGAONKAR, JJ.

DATE : 20TH JULY 2006

P.C. :

1. Heard the counsel for the parties.
2. By Minutes of Order dated 11th July 1986, this Court directed the Assistant Commissioner to pass a final order on the assessments for the period April 1977 to 18th November 1979. The said order was to be filed in this Court and was subject to such further orders as may be passed by this Court.
3. The Assistant Collector passed an order dated 23rd June 1988 finalising the assessment and held that the Petitioners are entitled to deduction on account of additional tax on Sales Tax (Sales Tax Surcharge) and were hence entitled to a refund of Rs.14,83,223.51.

4. The Petitioners have restricted their claim in this petition to the refund of Rs.14,83,223.51 as held by the Assistant Collector.

5. The Petitioners contend that "Sales Tax Surcharge" is a tax, which has to be borne by the seller and cannot be passed on to the customers and have, in fact, not been passed on to their customers, and that they are therefore entitled to the refund with interest which till date has not been given.

6. Without going into merits of the issue, we are of the view that the issue of unjust enrichment has to be determined by the appropriate Central Excise Officer. The Petitioners will file the necessary documents within 12 weeks from today. Within 12 weeks thereafter, the proper officer will adjudicate and decide whether the Petitioners have been able to show that no Sales Tax Surcharge was recovered from their customers after hearing the Petitioners.

7. The petition is disposed of in the above terms. There will be no order as to costs.

(H.L. GOKHALE, J.)

(V.R. KINGAONKAR, J.)